

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

HON. JONATHAN J.C. GREY

v.

No. 23-CR-20451

TYLER N. ROSS,

Defendant.

INITIAL APPEARANCE/ARRAIGNMENT/PLEA HEARING

BEFORE UNITED STATES DISTRICT JUDGE JONATHAN J.C. GREY

Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan

**Thursday, September 28, 2023
1:51 p.m.**

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INITIAL APPEARANCE/ARRAIGNMENT

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September 28, 2023

Detroit, Michigan

- - -

(Court, Counsel and Defendant present; 1:51 p.m.)

THE LAW CLERK: All rise.

THE COURT CLERK: The United States District Court for the Eastern District of Michigan is now in session; the Honorable Jonathan J.C. Grey presiding. You may be seated.

The Court calls Case Number 23-20451, the United States of America versus Tyler Ross. Counsel, please place your appearances on the record.

MR. YAHKIND: Good afternoon, your Honor. Andrew Yahkind on behalf of the United States.

MR. TYLER: And also Andrew Tyler, also on behalf of the United States, your Honor.

THE COURT: Good afternoon to both of you.

MR. KRIGER: Good afternoon, your Honor. Mark Kriger on behalf of Mr. Tyler Ross, who is present.

THE COURT: Good afternoon to the two of you as well, and you all may be seated.

This is the day and time, first, for Mr. Ross's initial appearance, as well as arraignment.

And so, Mr. Ross, I want to make sure that you understand some of your rights. The government has charged you in an information. Before I delve into, any deeper, into the

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1 substance of those charges, I want to review some of your
2 rights with you.

3 You have the right to remain silent and anything that
4 you say may be used against you. Do you understand?

5 THE DEFENDANT: Yes.

6 THE COURT: I also want to make sure that you know
7 that although you've hired an attorney to represent you, if at
8 any point you were unable to afford an attorney to represent
9 you, the Court would appoint an attorney to represent you. Do
10 you understand?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Thank you.

13 And I've also received the information,
14 acknowledgement of information, and a waiver.

15 Mr. Ross, did you sign these two documents? I'm
16 holding up the waiver and the acknowledgement.

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Thank you.

19 And this waiver indicates that you understand that you
20 have the right to have a grand jury weigh whether or not --
21 there is probable cause to return an indictment against you,
22 but you are waiving that right and you are allowing charges to
23 be brought by the United States Attorney's Office.

24 Is it true that you -- you understand those rights and
25 you're waiving your right to an indictment?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Thank you.

3 And, also, this information -- pardon me, the
4 acknowledgement of information indicates that you understand
5 that if you are convicted or if you plead guilty to Count 1,
6 conspiracy to commit an offense against the United States under
7 Title 18 United States Code Section 371, that the maximum term
8 of imprisonment is up to five years and there is a maximum fine
9 of up to \$250,000 or twice the gross gain or loss. Is all of
10 that true, that you understand that those are the penalties?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Thank you.

13 And I also have received a report from pretrial
14 services, but before we turn to that, just for completion of
15 arraignment purposes, Mr. Kriger, would you like for the Court
16 to read the information?

17 MR. KRIGER: Your Honor, we would waive formal reading
18 of the information.

19 THE COURT: Thank you.

20 And so to complete arraignment, I'm not going to read
21 the information, and I am entering a not guilty plea on your
22 behalf at this time, Mr. Ross.

23 And so turning to matters of bond versus detention, is
24 it true, Mr. Yahkind or Mr. Tyler, that the government is not
25 seeking detention?

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1 MR. YAHKIND: The government is not seeking detention
2 and would concur with the conditions recommended by pretrial
3 services, your Honor.

4 THE COURT: Thank you.

5 And I do have the written report from pretrial
6 services that recommends bond and specific conditions.

7 Mr. Kriger, any objection to these proposed
8 conditions?

9 MR. KRIGER: I have an objection to one condition,
10 your Honor, and that is the "recommend substance abuse and drug
11 testing." My client, or Mr. Ross, drinks couple glasses of
12 wine a week and is a very, very infrequent user of edibles,
13 which he's happy to stop, but he doesn't have a drug problem,
14 and we -- as I indicated in chambers, he did a interview with
15 probation today because he lives in California, and he did a
16 drug test, and that was negative. So I would ask that that be
17 waived.

18 As to the mental health evaluation, your Honor, he
19 is -- until he moved to California, he had been living in New
20 York City and was under the care of a psychiatrist, and he will
21 continue that once he finds a psychiatrist in the Bay Area, but
22 he will do that voluntarily, so. And wants to continue with
23 that.

24 THE COURT: Thank you. And so you're not requesting
25 that that condition technically be removed. Is that --

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1 MR. KRIGER: I don't think it's necessary, but he's
2 going to voluntarily do it whether it's there or not.

3 THE COURT: Thank you.

4 And I note that we have a representative from pretrial
5 services. Is it your desire to have drug testing and drug
6 treatment continue despite his negative test today?

7 MR. PORTELLI: Good afternoon, your Honor. Michael
8 Portelli with pretrial services.

9 Yes, pretrial recommends that the conditions still be
10 in place. It's as directed by pretrial services, meaning that
11 it would be at the discretion of his supervising officer in
12 California, and if it's established that marijuana use or
13 substance use in general is not a significant risk, then
14 pretrial services would test him according to his level of
15 risk. So it's not like it would necessarily be a drug test
16 every two weeks or every 30 days; it would just be based on
17 their assessment of what would be needed. So we still
18 recommend it.

19 THE COURT: Thank you.

20 Mr. Yahkind, would you like to be heard on that point?

21 MR. YAHKIND: I think that's a fair recommendation of
22 our position as well especially since we have an admission that
23 this defendant is using marijuana several times a year. I
24 think pretrial should have the discretion to order treatment as
25 necessary.

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1 THE COURT: Thank you.

2 And the Court also finds that each of these conditions
3 are reasonable.

4 I thank you, Mr. Kriger, for stating your position
5 quite clearly, but I do find that they're reasonable
6 particularly given the admissions, and the candid admissions
7 which are appreciated, by Mr. Ross regarding the use of
8 marijuana. It does remain illegal under federal law, and so
9 because of that, I do find that the condition is reasonable and
10 it is also quite likely that Mr. Ross will not be tested
11 regularly.

12 So I would just reiterate that these seven conditions
13 of bond and that pretrial services is recommending bond based
14 on \$10,000 unsecured bond with the conditions of reporting as
15 directed to pretrial services, surrender passport to pretrial
16 services immediately after release; that, Mr. Ross, that you
17 not obtain a passport, enhanced identification, or other
18 international travel document; that your travel be restricted
19 to the United States; that you participate in a mental health
20 evaluation and mental health treatment as directed by pretrial
21 services; that you submit to drug testing and/or treatment as
22 directed by pretrial services; and that you not use or
23 unlawfully possess a narcotic drug or other controlled
24 substance unless prescribed by a licensed medical practitioner.

25 Mr. Ross, if I accept and impose each of these

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1 conditions, do you agree to follow each and every condition of
2 bond?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Thank you.

5 Do you understand each of these conditions?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: I want to make sure that you are aware
8 that if you violated even just one condition of bond, you could
9 be charged with an additional offense and subjected to
10 additional punishment. Do you understand?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Thank you.

13 I am accepting and imposing conditions of bond.

14 And, Mr. Ross, you're going to have to sign your
15 agreement to follow these conditions. And after processing
16 today, you will be released from the courthouse and free to
17 return to your residence.

18 Mr. Yahkind and Mr. Tyler, pursuant to Rule 5(f), the
19 United States is ordered to comply with its disclosure
20 obligations under *Brady versus Maryland* and its progeny.
21 Failure to timely do so may result in dismissal of charges,
22 exclusion of evidence, adverse jury instructions, contempt
23 proceedings and other sanctions. Do you both understand?

24 MR. YAHKIND: Yes, your Honor.

25 MR. TYLER: Yes, your Honor.

PLEA HEARING

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1 THE COURT: Thank you.

2 And having completed the arraignment as well as the
3 initial appearance, I next turn to the further matter that is
4 presented to me, and it has been represented to me that
5 Mr. Ross actually desires to plead guilty to the charge in the
6 information.

7 Is that true, Mr. Kriger?

8 MR. KRIGER: That's correct, your Honor.

9 THE COURT: Thank you.

10 And so, Mr. Ross, you're going to be sworn at this
11 time. You'll be placed under oath.

12 THE COURT CLERK: Mr. Ross, please raise your right
13 hand.

14 **(Tyler Ross, sworn, 2:02 p.m.)**

15 THE DEFENDANT: I do.

16 THE COURT CLERK: You can lower your hand. Thank you.

17 MR. KRIGER: Would you like him at the podium, your
18 Honor --

19 THE COURT: There is fine, but if you're more
20 comfortable at the lectern, you certainly may approach there.

21 THE DEFENDANT: This is fine.

22 MR. KRIGER: This is fine.

23 THE COURT: Thank you.

24 I have a clear line of sight, and so I'm okay
25 proceeding as we are.

PLEA HEARING

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1 Mr. Ross, I'm going to ask you multiple questions in
2 this proceeding including about what you did. I want to make
3 sure that you are aware that you have to tell the truth and
4 that any answers that you might state that wouldn't be true
5 could be used against you in a separate prosecution for perjury
6 or for making a false statement. Do you understand?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: And can you just state your full name.

9 THE DEFENDANT: Tyler Neil (phonetic) Ross.

10 THE COURT: Thank you.

11 And do you understand, as I said to you earlier today,
12 that you have a constitutional right to remain silent and not
13 incriminate yourself?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: And is it true that you want to give that
16 right up and you want to plead guilty today?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: And I'm going to ask you some background
19 questions about competency.

20 How old are you, Mr. Ross?

21 THE DEFENDANT: 37 years old.

22 THE COURT: Thank you.

23 And how far did you go in school?

24 THE DEFENDANT: I graduated law school.

25 THE COURT: Thank you.

PLEA HEARING

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1 And do you have any issues with reading, writing, and
2 understanding in English?

3 THE DEFENDANT: No, your Honor.

4 THE COURT: And right now, sitting here today, are you
5 under the influence of any medication, drugs, or alcoholic
6 beverages?

7 THE DEFENDANT: No, your Honor.

8 THE COURT: I do find that Mr. Ross is capable of
9 entering a knowing plea.

10 Mr. Ross or Mr. Tyler, do you agree?

11 MR. YAHKIND: We agree, your Honor.

12 THE COURT: Thank you.

13 MR. KRIGER: Your Honor, he is under some medication,
14 but they don't affect his ability to understand what is going
15 on today.

16 THE COURT: Thank you.

17 And those specifically were the prescribed medications
18 identified in pretrial services report. Is that true?

19 MR. KRIGER: Correct.

20 THE COURT: Thank you.

21 And, Mr. Ross, you just heard Mr. Kriger make that
22 note to the Court. These medications, they were identified in
23 your discussion with pretrial services. Is that right?

24 THE DEFENDANT: It is, your Honor.

25 THE COURT: And you haven't taken anything else today

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1 that you were not prescribed. Is that true?

2 THE DEFENDANT: That is true, your Honor.

3 THE COURT: And the medications that you take, do they
4 have any impact on your ability to remember or to understand
5 what's happening?

6 THE DEFENDANT: No, your Honor.

7 THE COURT: Thank you.

8 And so, again, I find that Mr. Ross is capable of
9 entering a plea today.

10 Mr. Kriger, do you agree?

11 MR. KRIGER: I do agree, your Honor.

12 THE COURT: Thank you.

13 Mr. Ross, you have your attorney sitting right next to
14 you today. Have you discussed this matter in detail with
15 Mr. Kriger?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: And are you satisfied with both his advice
18 and his service?

19 THE DEFENDANT: I am, your Honor.

20 THE COURT: I also want to review additional rights
21 with you, and I need to make sure that you understand that if I
22 accept your plea of guilty, you'll be deprived of specific
23 civil rights including the right to vote; the right to vote,
24 the right to hold office, to serve on a jury, and to possess or
25 be around firearms. Do you understand that?

PLEA HEARING

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: And you'll also be giving up some
3 important constitutional rights, and I'm going to review those
4 with you.

5 Those include the right to plead not guilty, to have a
6 trial before this Court or a jury, and at that trial you would
7 be presumed innocent and the government would have to prove
8 your guilt beyond a reasonable doubt. You would have the
9 ability to question witnesses against you through your
10 attorney, and you could also have the Court order any witnesses
11 you have for your defense to appear at trial. You could also
12 simply remain silent during the trial and not have your silence
13 used against you, or if you wanted to testify, you could
14 testify. Understanding each of these rights, is it true that
15 you want to give all of them up and plead guilty?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: And I know that you had previously
18 received a copy of the information. Has Mr. Kriger explained
19 this one charge and the specific details to you enough?

20 THE DEFENDANT: He has, your Honor.

21 THE COURT: And are you pleading guilty because you've
22 had discussions with both your attorney and your attorney has
23 also had discussions with the attorneys for the government?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: And, Counsel, would you like to state the

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1 essential terms of the plea agreement at this time,
2 Mr. Yahkind?

3 MR. YAHKIND: Thank you, your Honor.

4 The agreement contemplates the defendant will plead
5 guilty to Count 1 of the information which charges conspiracy
6 to commit an offense against the United States under Title 18
7 U.S.C. Section 371. The agreement reviews the statutory
8 maximum penalties for that offense. There is an agreement not
9 to bring additional charges for conduct reflected in the
10 information, the factual basis of the plea agreement and a
11 section in the plea agreement that refers to additional conduct
12 that is the subject of a dispute between the parties. The
13 agreement reviews the elements of the count of conviction.
14 There is a detailed factual basis, your Honor, on pages 4
15 through 9 of the agreement.

16 On page 10 to the agreement, your Honor -- this is one
17 of the disputed issues between the parties -- the agreement
18 highlights that there is a dispute between the parties as to
19 the scope of relevant conduct in this case. And the agreement
20 in paragraph 6 addresses that dispute which relates to the sale
21 of certain properties in 2019 and the provision of some false
22 financial information in connection with that sale. And the
23 agreement reserves for the parties the right to present
24 information to the Court regarding that dispute for purpose of
25 determining the guideline range.

PLEA HEARING

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1 The agreement reviews the rights the defendant is
2 giving up as well as the collateral consequences of conviction.
3 In terms of the guideline range, your Honor, there are a few
4 agreed-upon guideline recommendations in the agreement relating
5 to the base offense level, relating to the fact that the
6 parties are agreeing to recommend that there is no loss in this
7 case and are agreeing to recommend the defendant was an
8 organizer or leader warranting an enhancement of two levels.

9 There is another disagreement highlighted on page 14,
10 your Honor. That disagreement relates to the applicability of
11 a certain sentencing enhancement that will affect the guideline
12 range in this case, and the parties reserve the right to
13 present their respective positions on that disagreement.

14 The agreement reviews the restrictions on the
15 defendant's inability to withdraw from the guilty plea. There
16 is also commitment by the government, your Honor, on page 16
17 that if the Court does find that the enhancement that the
18 government is seeking applies, that the government will make a
19 sentencing recommendation that varies below the low end of the
20 guideline range.

21 The government is not otherwise restricted as to its
22 sentencing recommendation.

23 There is no agreement on recommendation on the terms
24 of supervised release. There is no recommendation as to a
25 fine. The agreement does not address either restitution or

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1 forfeiture, your Honor. There is an appellate waiver here that
2 is a little bit unique. The defendant waives any right he has
3 to appeal his conviction on any grounds, but the defendant
4 retains the right as well -- the government also retains the
5 right to appeal the Court's determination on those two disputed
6 issues that I flagged. Otherwise, the defendant and the
7 government both waive any right they have to appeal the Court's
8 sentence.

9 The defendant does waive his rights to collateral
10 review. On page 19, there's certain additional consequences
11 regarding the use of the guilty plea and the use of any
12 withdrawing of any guilty plea that are addressed in the
13 agreement. And, your Honor, I believe those are the most
14 material terms of the agreement.

15 THE COURT: Thank you.

16 Mr. Kriger, are there any specific provisions of the
17 plea agreement that you would like to place on the record at
18 this time?

19 MR. KRIGER: No, your Honor, but I would just like to
20 clarify one thing that Mr. Yahkind said, and that is -- and he
21 referred to the scope of the relevant conduct. Our position is
22 it's not a question of scope, that there is no relevant
23 conduct, and then if there is relevant conduct, then the next
24 question would be whether the enhancement even applies to
25 Mr. Ross.

PLEA HEARING

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1 THE COURT: Thank you.

2 And you are referring to paragraph 6?

3 MR. KRIGER: Correct.

4 THE COURT: Noted for the record, and I believe
5 it's --

6 MR. KRIGER: Let me --

7 THE COURT: -- also clearly stated in the plea
8 agreement.

9 MR. KRIGER: Hold on one moment, your Honor. If you
10 don't mind.

11 Correct. It would be 6 and then also in paragraph 9
12 as well.

13 THE COURT: Thank you.

14 Mr. Ross, other than what is in this Rule 11 plea
15 agreement, have you been promised by this Court, your attorney,
16 or any of the attorneys for the government that you will be put
17 on probation or receive any other specific sentence in return
18 for pleading guilty?

19 THE DEFENDANT: No, your Honor.

20 THE COURT: Have there been any other promises made to
21 you in exchange for your pleading guilty that are not contained
22 in this Rule 11 plea agreement?

23 THE DEFENDANT: No, your Honor.

24 THE COURT: And I know that we went through the
25 penalties earlier, but I'm just going to state them again, that

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1 you understand the maximum penalties are up to five years in
2 prison, a fine of up to \$250,000, or twice the gross pecuniary
3 gain or loss, as well as a term of supervised release of up to
4 three years? Is it true that you understand all of that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Has anyone tried to force you to plead
7 guilty by any mistreatment or pressure?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: And are you pleading guilty freely and
10 voluntarily because, in fact, you are guilty?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: And specifically regarding the factual
13 basis of this offense, I know that there were multiple pages
14 provided by the parties in the plea agreement, and the essence
15 of this charge is that you knowingly made a false statement to
16 a mortgage lending business for the purpose of influencing the
17 action of that business in connection with the loan and that
18 you knowingly and voluntarily joined this conspiracy. Are both
19 of those items true?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: And the factual basis indicates that this
22 conspiracy lasted for multiple years, from 2015 through 2019,
23 in the Eastern District of Michigan and elsewhere and that, in
24 fact, you did conspire and agree with others to violate this
25 statute, Title 18 United States Code Section 1014. Is that

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1 true?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Thank you.

4 Would counsel like to do any additional voir dire for
5 purposes of the record?

6 MR. KRIGER: If the Court is satisfied, I don't think
7 it's necessary. But if the Court believes a more detailed
8 factual basis is necessary, I'm happy to do a voir dire with my
9 client.

10 THE COURT: Thank you.

11 I will just briefly supplement.

12 Mr. Ross, all of these pages, from page 5 through
13 pages 9, is any of that untrue?

14 THE DEFENDANT: No, your Honor.

15 THE COURT: Are you sure that all of that actually is
16 true?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: That you engaged in all of these
19 activities?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Mr. Yahkind?

22 MR. YAHKIND: The government is satisfied, your Honor.

23 THE COURT: Thank you.

24 And at this time, Mr. Ross, how do you plead?

25 THE DEFENDANT: Guilty, your Honor.

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1 THE COURT: Thank you.

2 The Court finds that Mr. Ross's plea is knowingly,
3 freely, and voluntarily made and that the elements of the
4 offense to which he's pleading guilty have been made out not
5 just by his statements in court but also supplemented by the
6 specific facts contained in the plea agreement which Mr. Ross
7 agreed with.

8 And so your plea of guilty has been accepted, and I'm
9 also accepting the Rule 11 plea agreement.

10 This matter will be referred to the probation
11 department for a completion of a presentence investigation
12 report, and this matter will proceed with a bifurcated
13 sentencing as requested by the parties. And so the first
14 sentencing date, Mr. Ross, we will have a hearing on evidence
15 that the attorneys would like to present surrounding how the
16 sentencing guidelines should be computed and then at the second
17 date we will actually be imposing sentence.

18 And so I believe we've identified the date of
19 January 22nd. Is that correct, Mr. Carroll?

20 THE LAW CLERK: Yes, Judge.

21 THE COURT: Or Miss Sandusky.

22 THE COURT CLERK: At 10:00 a.m.

23 THE COURT: So January 22nd, 2024, at 10:00 a.m. And
24 then the second part, the conclusion of sentencing, will take
25 place on March 12th.

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1 THE COURT CLERK: At 3:00.

2 THE COURT: March 12th, 2024, at 3:00 p.m. And so
3 prior to that time you will have the opportunity to review the
4 presentence investigation report.

5 Counsel, is there anything further that any party
6 would like to address?

7 MR. KRIGER: May I have a moment with Mr. Yahkind and
8 Mr. Tyler?

9 THE COURT: You may.

10 (Attorney conference.)

11 MR. KRIGER: Your Honor, we had indicated that prior
12 to the first phase of the sentencing hearing we would supply
13 the Court with our -- the relevant law as to our respective
14 positions. Do you want to set a date for when that will be
15 done?

16 THE COURT: Thank you for inviting me to do that,
17 Mr. Kriger. I do.

18 MR. KRIGER: And I think it would be helpful to do it
19 after we get the presentence report.

20 THE COURT: The Court is setting the date of
21 December 22nd of 2023. If for some reason the presentence
22 investigation report has not been disclosed by that time,
23 Counsel may request an adjustment on that date, and I don't
24 foresee the need for a reply, but to the extent that a reply is
25 needed, a reply may be filed within three weeks.

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1 MR. YAHKIND: Your Honor, may I raise an additional
2 issue?

3 THE COURT: You may.

4 MR. YAHKIND: I may have missed this, and if I did, I
5 apologize. I did not hear the Court advise the defendant --
6 the government does not anticipate seeking restitution, but the
7 Court has the authority to order restitution as well as impose
8 a special assessment. And then also I may have missed this as
9 well, and I apologize, your Honor, that the Court, in
10 determining the sentence, has an obligation to consider the
11 applicable guideline range and to consider that range, possible
12 departures from that range, and other factors under Title 18
13 U.S.C. 3553(a).

14 THE COURT: Thank you. Those are each true.

15 Restitution may be ordered as part of your sentence,
16 Mr. Ross, and the Court would have to consider whether or not
17 there is any restitution that is due and owing and should be
18 calculated. There is a mandatory special assessment of \$100
19 upon conviction, and that will be payable likely at the time of
20 sentencing or at the time the judgment is in -- at the time
21 that a judgment is issued by the Court.

22 And then the other matter that you referred to, before
23 you weigh in, Mr. Kriger, is the Court has to consider the
24 sentencing guidelines, Mr. Ross, prior to pronouncing a
25 sentence. The sentencing guidelines -- my sentence must not

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1 actually be within the sentencing guidelines, but I do have to
2 actually compute the sentencing guidelines and make sure that I
3 have counted them accurately. And so you should stay in close
4 contact with your attorney as this matter proceeds as the
5 guidelines are formulated by the probation department in the
6 presentence investigation report as well as whatever submission
7 your attorney will be making regarding how the Court should
8 count the guidelines. Do you understand all of that?

9 THE DEFENDANT: I do, your Honor.

10 THE COURT: Thank you.

11 Mr. Kriger, was there additional point?

12 MR. KRIGER: Yeah. You indicated that, and stated
13 that, the briefs were due on 12-22. The government bears the
14 burden of proof by a preponderance of the evidence that the,
15 number one, there's relevant conduct, and if so, whether the
16 enhancement even applies. Do you want them to file the first
17 brief and then we can file a response or do you want
18 simultaneous briefs?

19 THE COURT: We'll have the government file their brief
20 and you can respond three weeks later.

21 MR. KRIGER: Okay. And then --

22 THE COURT: Which would be January 12th, 2024.

23 MR. KRIGER: Okay.

24 THE COURT: I don't foresee a reply being needed, but,
25 Mr. Yahkind and Mr. Tyler, if you would like to file a reply,

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1 you may do so by Friday, January 29th, 2024.

2 MR. KRIGER: You said 1-12 for our brief, correct?

3 THE COURT: Correct. And the 19th for a reply by the
4 government if they desire to do so. And then we will have the
5 hearing a few days after that.

6 MR. KRIGER: Okay. Thank you, your Honor.

7 THE COURT: Thank you, Mr. Kriger.

8 Anything additional?

9 MR. KRIGER: Nothing further, your Honor.

10 MR. YAHKIND: May I raise one more issue? I
11 apologize, your Honor.

12 THE COURT: Yes.

13 MR. YAHKIND: I'm just looking at my checklist here.

14 I know I reviewed the terms of the agreement and
15 discussed the appellate waiver and the collateral review
16 waivers. I'm not sure if the Court wants to address those as
17 well pursuant to Rule 11.

18 THE COURT: Well, those are part of the plea agreement
19 and they are part of the record.

20 MR. YAHKIND: Thank you, your Honor.

21 THE COURT: If there is anything additional you would
22 like to say, you may, but basically, Mr. Ross, you may have
23 some limited rights to appeal as contemplated by whatever
24 you've agreed to in the plea agreement. Do you understand
25 that?

PLEA HEARING

26

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Thank you.

3 Mr. Kriger or Mr. Yahkind?

4 MR. KRIGER: Nothing further.

5 MR. YAHKIND: Nothing further.

6 THE COURT: Thank you. This matter is adjourned. And
7 you are free after processing.

8 (Proceedings concluded, 2:24 p.m.)

9 - - -

10 CERTIFICATION OF REPORTER

11

12 I, Leann S. Lizza, do hereby certify that the above-entitled
13 matter was taken before me at the time and place hereinbefore
14 set forth; that the proceedings were duly recorded by me
15 stenographically and reduced to computer transcription; that
16 this is a true, full and correct transcript of my stenographic
17 notes so taken; and that I am not related to, nor of counsel to
18 either party, nor interested in the event of this cause.

19

20

21 S/Leann S. Lizza 12-18-2023

22 Leann S. Lizza, CSR-3746, RPR, CRR, RMR, RDR Date

23

24

25